



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/155274

PRELIMINARY RECITALS

Pursuant to a petition filed February 01, 2014, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on March 06, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether United Health Care Community Plan (United Health Care) correctly denied Petitioner's request for personal care (PCW) service hours.

NOTE: The record was held open to give United Health Care an opportunity to submit a letter from Dr. Donna Davidoff. It has been marked as Exhibit 5 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Mary Reich, Manager of Health Services
United Health Care
10701 W. Research Drive
Milwaukee, WI 53226-0649

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On October 9, 2013, United Health Care sent the Petitioner a letter indicating that it was denying his request for PCW hours. (Exhibit 4, attachment 3)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 4, 2014. (Exhibit 1)

DISCUSSION

Under the discretion allowed by *Wis. Stat.*, §49.45(9), the Department of Health Services (DHS) requires MA recipients to participate in HMOs. *Wis. Admin. Code*, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. *Wis. Admin. Code*, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHS are the same as the general MA criteria. See *Wis. Admin. Code*, §DHS 104.05(3) which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. *Wis. Admin. Code*, §DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals.

Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the department's denial within 45 days. *Wis. Stat.*, §49.45(5), *Wis. Admin. Code*, §DHS 104.01(5)(a)3.

Here, United Health Care sent Petitioner a notice on October 9, 2013, indicating that it was denying a request for PCW service hours. That would place the appeal deadline at November 25, 2013. The response letter from the Department of Health Service, Division of Healthcare Access and Accountability, stated that the Petitioner did not file a grievance and there is no documentation in the record of any grievance filed by the Petitioner. (See Exhibit 4)

The Petitioner did not file an appeal with the Division of Hearings and appeals until February 4, 2014, well past the 45 day / November 25, 2013 deadline. Regrettably, Petitioner's appeal is untimely and there is no jurisdiction to hear the merits of his appeal.

Petitioner asserts that he did not get the October 9, 2013 denial letter. However, *Wis. Stats.* §891.46 creates a presumption that service has occurred upon mailing, stating that, "summonses, citations, notices, motions and other papers required or authorized to be served by mail in judicial or administrative proceedings are presumed to be served when deposited in the U.S. mail with properly affixed evidence of prepaid postage." Further, "the mailing of a letter creates a presumption that the letter was delivered and received." *State ex. rel Flores*, 183 Wis.2d 587 at 612, 516 N.w.2d 362 (1994) Thus, the party challenging the presumption bears the burden of presenting credible evidence of non-receipt. *Id* at 613.

Petitioner testified that the letter was mailed to the correct address. The Petitioner also stated that there was no particular reason why he would not have received his mail. As such, there is insufficient evidence in the record to rebut the presumption that Petitioner timely received the October 9, 2013 letter denying his request for PCW service hours.

CONCLUSIONS OF LAW

Petitioner's appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

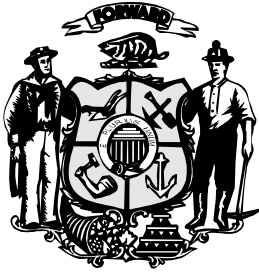
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of April, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 9, 2014.

Division of Health Care Access and Accountability